STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	)	
	)	
	)	ICC Docket No. 16-0453
Petition for Approval of the 2017	)	
Illinois Power Agency Procurement Plan	)	
Pursuant to Section 16-111.5(d)(4) of the	)	
Public Utilities Act	)	

VERFIED REPLY COMMENTS OF THE PEOPLE OF THE STATE OF ILLINOIS TO THE RESPONSES TO OBJECTIONS FILED TO THE 2017 ILLINOIS POWER AGENCY PROCUREMENT PLAN

The People of the State of Illinois ("the People" or "the OAG"), through Lisa Madigan, Attorney General of the State of Illinois, hereby file their Verified Reply Comments to the Objections/Comments to the Illinois Power Agency's ("IPA") 2017 Procurement Plan filed on October 21, 2016, in accordance with the filing requirements of Section 16-111.5(d)(3) of the Public Utilities Act ("the Act"). 220 ILCS 5/16-111.5(d)(3).

I. INTRODUCTION.

The People's Reply Comments will address the Responses to Objections/Comments filed by Ameren Illinois Company ("Ameren"), Commonwealth Edison Company ("ComEd"), the Illinois Power Agency ("IPA") and the Commission Staff ("Staff"). Failure to respond to any particular argument should not be interpreted to mean acquiescence on the point.

II. RESPONSE TO ISSUES ADDRESSING SECTION 16-111.5B OF THE ACT

A. Section 9.4.1 -- Scale of Section 16-111.5B Programs

In its Response to the AG Objections/Comments filed on October 11th, Ameren objects to the OAG's request that not only endorsed the IPA's suggestion that post-docket workshops be conducted to determine why the 2017 energy efficiency procurement included fewer bids (and

whether it was due to "an indicator of barriers to participation by potential bidders" (IPA Plan at 113-114)), but also recommended that the 2018 procurement process "reflect the consensus of these discussions in improving efforts at disseminating the RFP." AIC Response at 3. Ameren calls this an unreasonable "demand" and asserts that "the obligation to run an RFP is AIC's" and that there is "no real problem that needs to be solved". Ameren Response at 3-4. This response is unnecessarily defensive, if not unorthodox.

The point made in the OAG's October 3rd Comments was that to the extent some consensus on the issue is reached in any workshops, it should be reflected in the 2018 RFP process – nothing more. It would be absurd to have parties participate in workshops without knowing that any consensus reached would not be put into action by the Utilities in the next RFP energy efficiency procurement process. The Commission should reject Ameren claims that the decline in bids was somehow explained by the fact that the utilities file their three-year plans this year or that the issue "probably will not manifest again next year even if the parties do nothing." Ameren Response at 4. Neither the IPA nor any of the parties knows the cause for the reduced number of bids. The fact is the IPA observed that while it is possible that the lower numbers of bids "could constitute an accurate reflection of the market for energy efficiency in Illinois", another possible explanation for the decline is "an indicator of barriers to participation by potential bidders." IPA Plan at 113-114. Hence the need to address the issue in workshops.

The Commission should ensure that the time and attention stakeholders, utilities and the IPA expend on analyzing the issue through the workshop process, if so ordered, has some consequence. The Commission should endorse the OAG's request that any consensus reached in workshops held to address the breadth of participation issue be reflected in the 2018 RFP Procurement process.

Ameren next complains about the OAG's position in the People's October 3rd Objections/Comments that utilities be directed to include in the Section 16-111.5B RFP process specific solicitations for *programs* that capture savings identified by the potential studies required under Section 16.111.5B(a)(3)(A). Ameren notes that the IPA recommendation was, instead, that the utility RFPs "specifically identify any program *areas* for which bids should be actively sought." Ameren Response at 4. Ameren dramatically characterizes the slight difference in wording as a call to shift the burden of developing qualifying "from the bidders onto the utilities in a manner not contemplated by the act" and further opines that the OAG's words "strips bidders of the ability to be creative and innovative in the development of competitive bids designed to fill the gaps in the potential studies conducted by the utilities." That rhetoric should be rejected.

Potential studies presented to SAG participants have typically identified particular measures as well as programs that show promise and potential going forward within various utility service territories. The use of the word "programs" as compared to the IPA's "program areas" is a distinction without a difference. Regardless of the wording used, the Commission should do as the IPA has recommended – ensure that the RFPs are open-ended *and* identify to potential bidders program areas for which bids should be actively sought. As the IPA aptly noted, ratepayers subsidize the costs of these studies, which are not inexpensive. The Commission should ensure by adopting the IPA's reasonable recommendation that the conclusions reached provide some minimum level of guidance for potential bidders. Of course, contrary to Ameren's overwrought suggestion, the open-ended nature of these RFPs should continue to encourage the creation and receipt of creative energy efficiency bids of all cost-effective kinds.

B. Section 9.4.2 – Improving/Refining Bids (Contract Scrutiny)

In its Response, the IPA argues against the AG's recommendation that the Utilities be required to follow the Commission's directive from the last IPA Procurement docket, 15-0541, and apply the same level of scrutiny to the Section 16-111.5B contracts as the Utilities apply to Section 8-103 vendor contracts. IPA Response at 12-14. Ameren likewise challenges this recommendation. Ameren Response at 6-9. For its part, Ameren complains that the Section 16-111.5B *programs* are subject to *more* scrutiny than Section 8-103 programs, given the analyses required in subsections 156-111.5B(a)(3)(A)-(G). *Id.* at 6. Ameren further complains that the OAG's request that the Companies be required to follow the directive the Commission issued in Docket No. 15-0541 that would require the Companies to negotiate the contracts for best practices and cost and savings with the same level of scrutiny applied to Section 8-103 contracts, is "unworkable in practice because AIC has no control over when or how the bidders, who put together a bid they believe would be profitable for them, will react." ComEd's answer to the issue is to simply request that the Commission approve *their* contracts.

All of these responses should be rejected. To be clear, the OAG is simply asking the Commission to uphold the finding it made last year that would require the Companies to negotiate the contracts for best practices and cost and savings with the same level of scrutiny applied to Section 8-103 contracts. ICC Docket No. 15-0541, Final Order at 110. Ameren's claim that such a directive is unworkable rings hollow. The Utilities could make clear in the RFPs that final terms would be subject to negotiation to ensure that ratepayers who finance the programs are assured of the same diligence in reviewing contract terms that the Utilities apply to their Section 8-103 programs.

Second, there is a difference between evaluating the cost-effectiveness of a proposed program, as Section 16-111.5B requires, and finalizing a contract to ensure that ratepayers receive a quality program. For example, if a program incents CFLs – a measure that is barely cost-effective due to changing lighting standards and market price reductions – the utility should be able to go back to the vendor and suggest that the bid be modified to incent LED bulbs. Or perhaps an implementation strategy for an otherwise cost-effective program could be modified to better serve customers. These are areas in which the utilities are in a position to improve both the content and cost of a program.

Ameren further claims that the OAG's request is inconsistent with the People's criticism of Ameren's practice of employing surety bonds and holdback provisions. Ameren Response at 8-9. Ameren's comments on this point are a red herring. The OAG raised those points in its Objections/Comments because currently, both Ameren and ComEd employ significantly different pay-for-performance contract provisions. Ameren requires a surety bond, ComEd does not. ComEd's holdback provisions are significantly higher than Ameren's. As noted in the OAG Comments, the IPA too expressed its frustration on this point, noting that it had no evidence as to what struck the right balance of protecting ratepayers and not foreclosing vendors from participating in the bid process. The People urged the Commission to seek specific evidence in this proceeding on what constitutes the right balance of protecting ratepayer interests in funding only quality, cost-effective programs and not making contract provisions so draconian that smaller bidders are discouraged from participating in the bidding process. The decision was made in a ruling that no hearings were necessary. The point raised on these inconsistencies is a separate issue, and should not be tied to the lesser scrutiny applied to IPA program contracts issue.

Ameren criticizes the OAG for suggesting that the Utilities failed to comply with the Commission's directive on this point. Ameren argues consensus could not be reached. But the fact

is the differential between contracting approaches with the vendors between Section 8-103 program contracts and Section 16-111.5B program contracts remains. No substantive evidence supporting the contrasting contracting strategies has been supplied to either the IPA or stakeholders. The stark contrasts between companies' approach to IPA contracts still exists. In addition, Stakeholders are uncertain whether the new pay-for-performance contract provisions, highlighted above and in the OAG's previous Comments and Response, have the result of increasing program costs unnecessarily.

Two issues related to contracting thus await the Commission's consideration and direction: (1) how to ensure that the same level of scrutiny is applied to IPA vendor contracts as is applied to Section 8-103 contracts, and (2) how to reach consensus on vendor contract terms that strike the right balance of protecting ratepayers (and shareholders) from poorly performing vendors and ensuring that the terms are not so draconian to result in additional, unnecessary costs added to program bids.

The Commission should again require the parties to explore these issues in workshops. Ameren should be required to explain why it believes a surety bond is necessary. ComEd should detail why it believes the significant holdback provisions it employs achieve the right balance of encouraging broad vendor participation and ratepayer protections. Consensus agreements reached in additional workshops should be applied to the 2018 IPA Procurement Plan. Discussion of Section 8-103 contracting practices and how they can or cannot be applied to IPA contract negotiations should also be an agenda item. Such Commission direction is essential to ensuring that ratepayers are not paying more than they should for an energy efficiency program, are adequately protected from bad program designs, and that smaller potential vendors are not unfairly shut out of the bid process before it begins.

C. Section 9.5.3: Review of Ameren Illinois TRC Analysis

1. EM&V Cap

Ameren claims that the OAG has offered no principled basis for suggesting that the EM&V cap on costs should coincide with the Section 8-103 EM&V cost cap. Ameren states that there exists no justification for such a position. Ameren Response at 11-12. Ameren is wrong.

At Appendix A of the Stakeholder Advisory Group, page 22, Consensus items from the IPA Workshop process are listed. One of those provisions states, "Expenditures on evaluation should be capped for the Section 16-111.5B Programs as they are for the Section 8-103 Programs. Each Program's evaluation budget should not be restricted to three percent (3%) of the Program budget, but evaluation costs should be limited to three percent (3%) of the combined Section 16-111.5B Programs' budget." IPA 2017 Procurement Plan, Appendix H, p. 22.

The Commission should order the IPA and Ameren to revise the program costs submitted in the Ameren bid to move any evaluation costs above 3% from the costs assessed to the programs.

D. Section 9.5.4.1 – Policy Implications

In response to the AG Objections/Comments, AIC argues that the ICC has the authority to exclude programs that pass the total resource cost test ("TRC") for other reasons, including the "cross-subsidization of gas savings by electric-only ratepayers". Ameren Response at 16-17. The OAG does not dispute the fact that the Commission may exclude programs that otherwise pass the TRC, "if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103" of the Public Utilities Act. 220 ILCS 5/16-111.5B(a)(5). However, Ameren argues that the ICC should make this exclusion finding on the basis of its contention that programs that result in gas savings necessarily result in a cross subsidy from electric to gas ratepayers. That position is inconsistent with Section 16-111.5B.

As the AG, NRDC and Staff Response have shown, so long as a program passes the utility cost test ("UCT"), the electric ratepayers will receive greater electric system benefits than costs incurred. This is precisely what the UCT does: it compares the *electric s*ystem benefits to the cost to electric ratepayers. Therefore, any programs passing the UCT should be accepted, as any additional gas benefits are simply an added societal benefit that in no way hurts the electric ratepayers.

Ameren further responds (AIC Response at 17-18) that it disagrees with NRDC's contention that the electric-only TRC test Ameren used does not adequately analyze the impact on electric ratepayers. But NRDC is correct, as Staff also acknowledges in its Response at pages 11-12. Ameren's all-electric TRC test, in fact, inappropriately strips away all non-electric benefits, but retains all societal costs, including the contributions of gas participants to the cost of the programs. Such an analysis does not accurately reflect costs to the electric ratepayers. Rather, the question of concern to the ICC should simply be whether the IPA program provides electric system benefits that exceed the electric ratepayer costs, which is measured by the UCT. This is the proper test to determine whether the program provides a resource that is cheaper than the cost of electric service, as dictated by the Section 16-111.5B(a)(3)(D).

Accordingly, Ameren's arguments on this point should be rejected.

III. CONCLUSION

In accordance with the recommendations above, the People of the State of Illinois respectfully request that the Commission enter an Order consistent with the recommendations made in this Reply and the People's Response filed on October 21, 2016.

Respectfully submitted,

People of the State of Illinois
By Lisa Madigan, Attorney General

By: ____/s/_____

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